

109TH CONGRESS
1ST SESSION

S. 240

To amend the Internal Revenue Code of 1986 to allow small business employers a credit against income tax with respect to employees who participate in the military reserve components and are called to active duty and with respect to replacement employees and to allow a comparable credit for activated military reservists who are self-employed individuals, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 1, 2005

Mr. KERRY (for himself, Mr. LEAHY, Mrs. MURRAY, Mr. ROCKEFELLER, Mr. DURBIN, Mr. PRYOR, and Ms. STABENOW) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to allow small business employers a credit against income tax with respect to employees who participate in the military reserve components and are called to active duty and with respect to replacement employees and to allow a comparable credit for activated military reservists who are self-employed individuals, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Small Business Military Reservist Tax Credit Act”.

4 **SEC. 2. CREDIT FOR INCOME DIFFERENTIAL FOR EMPLOY-**
 5 **MENT OF ACTIVATED MILITARY RESERVIST**
 6 **AND REPLACEMENT PERSONNEL.**

7 (a) IN GENERAL.—Subpart B of part IV of sub-
 8 chapter A of chapter 1 of the Internal Revenue Code of
 9 1986 (relating to foreign tax credit, etc.) is amended by
 10 adding at the end the following new section:

11 **“SEC. 30B. EMPLOYER WAGE CREDIT FOR ACTIVATED MILI-**
 12 **TARY RESERVISTS.**

13 “(a) GENERAL RULE.—There shall be allowed as a
 14 credit against the tax imposed by this chapter for the tax-
 15 able year an amount equal to the sum of—

16 “(1) in the case of a small business employer,
 17 the employment credit with respect to all qualified
 18 employees and qualified replacement employees of
 19 the taxpayer, plus

20 “(2) the self-employment credit of a qualified
 21 self-employed taxpayer.

22 “(b) EMPLOYMENT CREDIT.—For purposes of this
 23 section—

24 “(1) QUALIFIED EMPLOYEES.—

25 “(A) IN GENERAL.—The employment cred-
 26 it with respect to a qualified employee of the

taxpayer for any taxable year is equal to 50 percent of the lesser of—

“(i) the excess, if any, of—

“(I) the qualified employee’s average daily qualified compensation for the taxable year, over

“(II) the average daily military pay and allowances received by the qualified employee during the taxable year, while participating in qualified reserve component duty to the exclusion of the qualified employee’s normal employment duties for the number of days the qualified employee participates in qualified reserve component duty during the taxable year, including time spent in a travel status, or

“(ii) \$30,000.

The employment credit, with respect to all qualified employees, is equal to the sum of the employment credits for each qualified employee under this subsection.

“(B) AVERAGE DAILY QUALIFIED COMPENSATION AND AVERAGE DAILY MILITARY PAY

1 AND ALLOWANCES.—As used with respect to a
2 qualified employee—

3 “(i) the term ‘average daily qualified
4 compensation’ means the qualified com-
5 pensation of the qualified employee for the
6 taxable year divided by the difference be-
7 tween—

8 “(I) 365, and

9 “(II) the number of days the
10 qualified employee participates in
11 qualified reserve component duty dur-
12 ing the taxable year, including time
13 spent in a travel status, and

14 “(ii) the term ‘average daily military
15 pay and allowances’ means—

16 “(I) the amount paid to the
17 qualified employee during the taxable
18 year as military pay and allowances
19 on account of the qualified employee’s
20 participation in qualified reserve com-
21 ponent duty, divided by

22 “(II) the total number of days
23 the qualified employee participates in
24 qualified reserve component duty, in-
25 cluding time spent in travel status.

1 “(C) QUALIFIED COMPENSATION.—When
2 used with respect to the compensation paid or
3 that would have been paid to a qualified em-
4 ployee for any period during which the qualified
5 employee participates in qualified reserve com-
6 ponent duty, the term ‘qualified compensation’
7 means—

8 “(i) compensation which is normally
9 contingent on the qualified employee’s
10 presence for work and which would be de-
11 ductible from the taxpayer’s gross income
12 under section 162(a)(1) if the qualified
13 employee were present and receiving such
14 compensation,

15 “(ii) compensation which is not char-
16 acterized by the taxpayer as vacation or
17 holiday pay, or as sick leave or pay, or as
18 any other form of pay for a nonspecific
19 leave of absence, and with respect to which
20 the number of days the qualified employee
21 participates in qualified reserve component
22 duty does not result in any reduction in
23 the amount of vacation time, sick leave, or
24 other nonspecific leave previously credited
25 to or earned by the qualified employee, and

1 “(iii) group health plan costs (if any)
2 with respect to the qualified employee.

3 “(D) QUALIFIED EMPLOYEE.—The term
4 ‘qualified employee’ means a person who—

5 “(i) has been an employee of the tax-
6 payer for the 91-day period immediately
7 preceding the period during which the em-
8 ployee participates in qualified reserve
9 component duty, and

10 “(ii) is a member of the Ready Re-
11 serve of a reserve component of an Armed
12 Force of the United States as defined in
13 sections 10142 and 10101 of title 10,
14 United States Code.

15 “(2) QUALIFIED REPLACEMENT EMPLOYEES.—

16 “(A) IN GENERAL.—The employment cred-
17 it with respect to a qualified replacement em-
18 ployee of the taxpayer for any taxable year is
19 equal to 50 percent of the lesser of—

20 “(i) the individual’s qualified com-
21 pensation attributable to service rendered
22 as a qualified replacement employee, or

23 “(ii) \$12,000.

24 The employment credit, with respect to all
25 qualified replacement employees, is equal to the

1 sum of the employment credits for each quali-
2 fied replacement employee under this sub-
3 section.

4 “(B) QUALIFIED COMPENSATION.—When
5 used with respect to the compensation paid to
6 a qualified replacement employee, the term
7 ‘qualified compensation’ means—

8 “(i) compensation which is normally
9 contingent on the qualified replacement
10 employee’s presence for work and which is
11 deductible from the taxpayer’s gross in-
12 come under section 162(a)(1),

13 “(ii) compensation which is not char-
14 acterized by the taxpayer as vacation or
15 holiday pay, or as sick leave or pay, or as
16 any other form of pay for a nonspecific
17 leave of absence, and

18 “(iii) group health plan costs (if any)
19 with respect to the qualified replacement
20 employee.

21 “(C) QUALIFIED REPLACEMENT EM-
22 PLOYEE.—The term ‘qualified replacement em-
23 ployee’ means an individual who is hired to re-
24 place a qualified employee or a qualified self-
25 employed taxpayer, but only with respect to the

1 period during which such employee or taxpayer
 2 participates in qualified reserve component
 3 duty, including time spent in travel status.

4 “(c) SELF-EMPLOYMENT CREDIT.—For purposes of
 5 this section—

6 “(1) IN GENERAL.—The self-employment credit
 7 of a qualified self-employed taxpayer for any taxable
 8 year is equal to 50 percent of the lesser of—

9 “(A) the excess, if any, of—

10 “(i) the self-employed taxpayer’s aver-
 11 age daily self-employment income for the
 12 taxable year over

13 “(ii) the average daily military pay
 14 and allowances received by the taxpayer
 15 during the taxable year, while participating
 16 in qualified reserve component duty to the
 17 exclusion of the taxpayer’s normal self-em-
 18 ployment duties for the number of days the
 19 taxpayer participates in qualified reserve
 20 component duty during the taxable year,
 21 including time spent in a travel status, or

22 “(B) \$30,000.

23 “(2) AVERAGE DAILY SELF-EMPLOYMENT IN-
 24 COME AND AVERAGE DAILY MILITARY PAY AND AL-

1 LOWANCES.—As used with respect to a self-em-
 2 ployed taxpayer—

3 “(A) the term ‘average daily self-employ-
 4 ment income’ means the self-employment in-
 5 come (as defined in section 1402(b)) of the tax-
 6 payer for the taxable year plus the amount paid
 7 for insurance which constitutes medical care for
 8 the taxpayer for such year (within the meaning
 9 of section 162(l)) divided by the difference be-
 10 tween—

11 “(i) 365, and

12 “(ii) the number of days the taxpayer
 13 participates in qualified reserve component
 14 duty during the taxable year, including
 15 time spent in a travel status, and

16 “(B) the term ‘average daily military pay
 17 and allowances’ means—

18 “(i) the amount paid to the taxpayer
 19 during the taxable year as military pay
 20 and allowances on account of the tax-
 21 payer’s participation in qualified reserve
 22 component duty, divided by

23 “(ii) the total number of days the tax-
 24 payer participates in qualified reserve com-

1 ponent duty, including time spent in travel
2 status.

3 “(3) QUALIFIED SELF-EMPLOYED TAXPAYER.—

4 The term ‘qualified self-employed taxpayer’ means a
5 taxpayer who—

6 “(A) has net earnings from self-employ-
7 ment (as defined in section 1402(a)) for the
8 taxable year, and

9 “(B) is a member of the Ready Reserve of
10 a reserve component of an Armed Force of the
11 United States.

12 “(d) CREDIT IN ADDITION TO DEDUCTION.—The
13 employment credit or the self-employment credit provided
14 in this section is in addition to any deduction otherwise
15 allowable with respect to compensation actually paid to a
16 qualified employee, qualified replacement employee, or
17 qualified self-employed taxpayer during any period the
18 qualified employee or qualified self-employed taxpayer par-
19 ticipates in qualified reserve component duty to the exclu-
20 sion of normal employment duties.

21 “(e) COORDINATION WITH OTHER CREDITS.—The
22 amount of credit otherwise allowable under sections 51(a)
23 and 1396(a) with respect to any employee shall be reduced
24 by the credit allowed by this section with respect to such
25 employee.

1 “(f) LIMITATIONS.—

2 “(1) APPLICATION WITH OTHER CREDITS.—

3 The credit allowed under subsection (a) for any tax-
4 able year shall not exceed the excess (if any) of—

5 “(A) the regular tax for the taxable year
6 reduced by the sum of the credits allowable
7 under subpart A and sections 27, 29, and 30,
8 over

9 “(B) the tentative minimum tax for the
10 taxable year.

11 “(2) DISALLOWANCE FOR FAILURE TO COMPLY
12 WITH EMPLOYMENT OR REEMPLOYMENT RIGHTS OF
13 MEMBERS OF THE RESERVE COMPONENTS OF THE
14 ARMED FORCES OF THE UNITED STATES.—No credit
15 shall be allowed under subsection (a) to a taxpayer
16 for—

17 “(A) any taxable year, beginning after the
18 date of the enactment of this section, in which
19 the taxpayer is under a final order, judgment,
20 or other process issued or required by a district
21 court of the United States under section 4323
22 of title 38 of the United States Code with re-
23 spect to a violation of chapter 43 of such title,
24 and

25 “(B) the 2 succeeding taxable years.

1 “(3) DISALLOWANCE WITH RESPECT TO PER-
 2 SONS ORDERED TO ACTIVE DUTY FOR TRAINING.—
 3 No credit shall be allowed under subsection (a) to a
 4 taxpayer with respect to any period by taking into
 5 account any person who is called or ordered to active
 6 duty for any of the following types of duty:

7 “(A) Active duty for training under any
 8 provision of title 10, United States Code.

9 “(B) Training at encampments, maneu-
 10 vers, outdoor target practice, or other exercises
 11 under chapter 5 of title 32, United States Code.

12 “(C) Full-time National Guard duty, as
 13 defined in section 101(d)(5) of title 10, United
 14 States Code.

15 “(g) GENERAL DEFINITIONS AND SPECIAL RULES.—
 16 For purposes of this section—

17 “(1) SMALL BUSINESS EMPLOYER.—

18 “(A) IN GENERAL.—The term ‘small busi-
 19 ness employer’ means, with respect to any tax-
 20 able year, any employer who employed an aver-
 21 age of 50 or fewer employees on business days
 22 during such taxable year.

23 “(B) CONTROLLED GROUPS.—For pur-
 24 poses of subparagraph (A), all persons treated
 25 as a single employer under subsection (b), (c),

1 (m), or (o) of section 414 shall be treated as a
2 single employer.

3 “(2) MILITARY PAY AND ALLOWANCES.—The
4 term ‘military pay’ means pay as that term is de-
5 fined in section 101(21) of title 37, United States
6 Code, and the term ‘allowances’ means the allow-
7 ances payable to a member of the Armed Forces of
8 the United States under chapter 7 of that title.

9 “(3) QUALIFIED RESERVE COMPONENT
10 DUTY.—The term ‘qualified reserve component duty’
11 includes only active duty performed, as designated in
12 the reservist’s military orders, in support of a con-
13 tingency operation as defined in section 101(a)(13)
14 of title 10, United States Code.

15 “(4) SPECIAL RULES FOR CERTAIN MANUFAC-
16 TURERS.—

17 “(A) IN GENERAL.—In the case of any
18 qualified manufacturer—

19 “(i) subsections (b)(1)(A)(ii) and
20 (c)(1)(B) shall be applied by substituting
21 ‘\$40,000’ for ‘\$30,000’,

22 “(ii) subsection (b)(2)(A)(ii) shall be
23 applied by substituting ‘\$20,000’ for
24 ‘\$12,000’, and

1 “(iii) paragraph (1)(A) of this sub-
 2 section shall be applied by substituting
 3 ‘100’ for ‘50’.

4 “(B) QUALIFIED MANUFACTURER.—For
 5 purposes of this paragraph, the term ‘qualified
 6 manufacturer’ means any person if—

7 “(i) the primary business of such per-
 8 son is classified in sector 31, 32, or 33 of
 9 the North American Industrial Classifica-
 10 tion System, and

11 “(ii) all of such person’s facilities
 12 which are used for production in such busi-
 13 ness are located in the United States.

14 “(5) CARRYBACK AND CARRYFORWARD AL-
 15 LOWED.—

16 “(A) IN GENERAL.—If the credit allowable
 17 under subsection (a) for a taxable year exceeds
 18 the amount of the limitation under subsection
 19 (f)(1) for such taxable year (in this paragraph
 20 referred to as the ‘unused credit year’), such
 21 excess shall be a credit carryback to each of the
 22 3 taxable years preceding the unused credit
 23 year and a credit carryforward to each of the
 24 20 taxable years following the unused credit
 25 year.

1 “(B) RULES.—Rules similar to the rules of
 2 section 39 shall apply with respect to the credit
 3 carryback and credit carryforward under sub-
 4 paragraph (A).

5 “(6) CERTAIN RULES TO APPLY.—Rules similar
 6 to the rules of subsections (c), (d), and (e) of section
 7 52 shall apply.”.

8 (b) CONFORMING AMENDMENT.—Section 55(c)(2) of
 9 the Internal Revenue Code of 1986 is amended by insert-
 10 ing “30B(f)(1),” after “30(b)(3),”.

11 (c) CLERICAL AMENDMENT.—The table of sections
 12 for subpart B of part IV of subchapter A of chapter 1
 13 of the Internal Revenue Code of 1986 is amended by add-
 14 ing at the end 30A the following new item:

 “Sec. 30B. Employer wage credit for activated military reservists”.

15 (d) EFFECTIVE DATE; SPECIAL RULE.—

16 (1) EFFECTIVE DATE.—The amendments made
 17 by this section shall apply to amounts paid after
 18 September 11, 2001, in taxable years ending after
 19 such date.

20 (2) WAIVER OF LIMITATIONS.—If refund or
 21 credit of any overpayment of tax resulting from the
 22 amendments made by this section is prevented at
 23 any time before the close of the 1-year period begin-
 24 ning on the date of the enactment of this Act by the
 25 operation of any law or rule of law (including res ju-

1 dicata), such refund or credit may nevertheless be
2 made or allowed if claim therefor is filed before the
3 close of such period.

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